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On Target Security, Inc. and International Union Security, Police, Fire Professionals of America (SPFPA), Local 2003. Case 12–CA–119717

March 17, 2015

DECISION AND ORDER

BY MEMBERS HIROZAWA, JOHNSON, AND MCFERRAN

The General Counsel seeks a default judgment in this case on the ground that On Target Security, Inc. (the Respondent) has failed to file an answer to the amended complaint and compliance specification. Upon a charge filed by International Union Security, Police, Fire Professionals of America (SPFPA), Local 2003 (the Union), on December 27, 2013, the General Counsel issued a complaint, compliance specification, and notice of hearing (the complaint and compliance specification) on May 30, 2014. Thereafter, on September 17, 2014, the General Counsel issued an amended complaint, amended compliance specification, and notice of hearing (the amended complaint and compliance specification). The Respondent failed to file an answer to either the complaint and compliance specification or the amended complaint and compliance specification.¹

On November 25, 2014, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on January 7, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show

Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the amended complaint and compliance specification affirmatively stated that the Board may find, pursuant to a motion for default judgment, that the allegations in the amended complaint and compliance specification are true unless an answer was received by October 8, 2014. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated October 8, 2014, notified the Respondent that unless an answer was received by October 15, 2014, the Board may find that the allegations in the amended complaint and compliance specification are true. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a Maryland Corporation with a main office in Clinton, Maryland, and offices and places of business in San Juan and Aguadilla, Puerto Rico, and has been engaged in the business of providing security guard services to the United States Government and other entities.

In conducting its operations described above, during the 12-month period ending on September 30, 2013, the Respondent purchased and received at its San Juan and Aguadilla, Puerto Rico facilities, goods valued in excess of \$50,000 directly from points outside the Commonwealth of Puerto Rico.

In conducting its operations described above, during the 12-month period ending on September 30, 2013, the Respondent was engaged in providing security services valued in excess of \$50,000 to the United States Coast Guard at its locations in San Juan and Aguadilla, Puerto Rico.

¹ The motion for default judgment indicates that the Region sent correspondence to the Respondent by certified mail, as well as regular mail in several instances, to multiple addresses. Those addresses included (1) the Respondent's business address of record, which was listed in the Respondent's Uniform Commercial Code filing recorded on December 16, 2013, and also was confirmed by the U.S. Coast Guard contract specialist who worked with the Respondent pursuant to its contract to provide services to the U.S. Coast Guard; (2) the home address of the Respondent's president that is listed in the records of the Maryland Department of Assessments and Taxation, as well as in the Uniform Commercial Code filing referenced above; (3) a post office box address for the Respondent's president that the Region obtained from an Internet search; and (4) the address of a registered agent for the Respondent that the Region obtained from an Internet search. Many of the certified mailings were returned as unclaimed, refused, or otherwise undeliverable, although there is no indication that any documents sent to the Respondent by regular mail were returned. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003). Further, the failure of the postal service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), *enfd.* 843 F.2d 1392 (6th Cir. 1988).

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Gary Gandia	General Manager
Anthony Pearson	President

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and part-time armed security officers employed by Respondent and working on the United States Coast Guard contract at its San Juan and Aguadilla facilities in Puerto Rico; excluding all professional employees, confidential employees, office clerical employees and supervisors as defined in the Act, including colonels, captains, lieutenants, sergeant and all other employees.

Since about September 1, 2011, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement between the Respondent and the Union, which is effective by its terms from September 1, 2011, to September 30, 2014.

At all times since September 1, 2011, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Article 16 of the collective-bargaining agreement described above provides as follows with regard to the payment of a Christmas bonus:

Article 16: Christmas Bonus

16.1 Employees shall receive a Christmas Bonus in accordance with the dictates of the requirements of Puerto Rican law.

Since about December 15, 2013, the Respondent has failed to continue in effect all the terms and conditions of the collective-bargaining agreement described above by failing and refusing to pay the 2013 Christmas bonus to the employees in the unit.

The term and condition of employment described above is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in the conduct described above without the Union's consent.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to pay the 2013 Christmas bonus to the employees in the unit, we shall order the Respondent to make the employees whole by paying them the amounts set forth in the Appendix to the amended complaint and compliance specification, plus interest accrued to the date of payment at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and minus tax withholdings required by Federal and State laws. In addition, we shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving lump-sum backpay awards and to file a report with the Social Security Administration allocating the backpay to the appropriate calendar quarters, calculated as set forth in the amended complaint and compliance specification. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

In addition to the customary notice posting remedies, the General Counsel requests the additional remedy that the Respondent mail a notice to each unit employee's residence. In the absence of any explanation why the notice mailing remedy is warranted here, we deny the General Counsel's request.

ORDER

The National Labor Relations Board orders that the Respondent, On Target Security, Inc., San Juan and Aguadilla, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union Security, Police, Fire Professionals of America (SPFPA), Local 2003 as the exclusive collective-bargaining representative of the em-

employees in the following unit by, without SPFPA's consent, failing and refusing to pay the 2013 Christmas bonus to the employees in the unit:

Name	Backpay Due
Angel R Torres Aguirre	\$600.00
Luis Garmendiz Ayala	\$600.00
Marisol Sanabria Bonilla	\$600.00
Gregory Camacho Cancel	\$600.00
Samuel Alago Carrero	\$600.00
Carlos E. Rivera Centeno	\$600.00
Jesus Gonzalez Cerezo	\$600.00
Ismael Rolon Chinaea	\$600.00
Edgar H. Hernandez Cortez	\$600.00
Pablo Ruiz Cruz	\$600.00
Roberto Hernandez Cruz	\$600.00
Ricardo Marquez Davila	\$600.00
Luis A Maisonet Espinofa	\$600.00
Angel D. Hernandez Gonzalez	\$600.00
Luis Pellot Gonzalez	\$600.00
Nelson Quinones Gonzalez	\$600.00
Reynaldo Blondet Hernandez	\$600.00
Jaime Gonzalez Kratchel	\$600.00
Isaac Melendez Lebron	\$600.00
Margarita Talavera Lopez	\$600.00
Luis Hernandez Moralez	\$600.00
Mariano Talavera Muniz	\$600.00
Johnny Rosado Negron	\$600.00
Rigoberto Rodriguez Negron	\$600.00
Gilberto Perez Nieves	\$600.00
Ricardo Gonzalez Nunez	\$600.00
Alfredo Rodriguez Ortiz	\$600.00
William Soldevila Pena	\$600.00
Suhail Roman Perez	\$600.00
Winston Colon Ramos	\$600.00
Daniel Ortiz Rivera	\$600.00
Alfredo H Rodriguez	\$600.00
Francisco J Cruz Rodriguez	\$600.00
Edgardo Sotomayor Ruiz	\$600.00
David Velez Serra	\$600.00
Julio Cuevas Soto	\$600.00
Michael Robles Soto	\$600.00
Angel Perez Torres	\$600.00
Roberto Bruno Vale	\$600.00
Richard Ortiz Vazquez	\$600.00
Pablo Rodriguez Velez	\$600.00
Frank Llaguno Zambrano	\$600.00
Total:	\$25,200.00

All regular full-time and part-time armed security officers employed by Respondent and working on the United States Coast Guard contract at its San Juan and Aguadilla facilities in Puerto Rico; excluding all professional employees, confidential employees, office clerical employees and supervisors as defined in the Act, including colonels, captains, lieutenants, sergeant and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the following unit employees whole for the Respondent's failure to pay the 2013 Christmas bonus to the employees in the unit, by paying them the total amounts opposite their names, with interest in the manner set forth in the remedy section of this decision. The total amount due is \$25,200.00, plus interest.

(b) Compensate the unit employees for any adverse tax consequences of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(c) Within 14 days after service by the Region, post at its facilities in San Juan and Aguadilla, Puerto Rico, copies of the attached notice marked "Appendix,"² in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 15, 2013.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director for Region 12 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 17, 2015

Kent Y. Hirozawa,	Member
Harry I. Johnson, III,	Member
Lauren McFerran,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Union Security, Police, Fire Professionals of America (SPFPA), Local 2003 as the exclusive collective-bargaining representative of our employees in the following unit by, without SPFPA's consent, failing and refusing to pay the 2013 Christmas bonus to the employees in the unit:

All regular full-time and part-time armed security officers employed by Respondent and working on the United States Coast Guard contract at its San Juan and Aguadilla facilities in Puerto Rico; excluding all professional employees, confidential employees, office clerical employees and supervisors as defined in the Act, including colonels, captains, lieutenants, sergeant and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL make our unit employees whole for our failure to pay the 2013 Christmas bonus to the employees in the unit, by paying them the total amounts set forth in the Board's Order, plus interest accrued to the date of payment.

WE WILL compensate our unit employees for any adverse tax consequences of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

ON TARGET SECURITY, INC.

The Board's decision can be found at www.nlrb.gov/case/12-CA-119717 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.